



August 7, 2001

Mr. Ric Gonzalez
Assistant City Attorney
City of Lewisville
P.O. Box 299002
Lewisville, Texas 75029-9002

OR2001-3431

Dear Mr. Gonzalez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150421.

The City of Lewisville (the "city") received a request for copies of engineering drawings for the "Lowe's" pylon sign located at I-35 and Valley Ridge. You assert no exception to the release of the requested information, nor do you submit any arguments against its disclosure. However, you advise this office that the requested information may involve the privacy interests of Lowe's Home Improvement Warehouse ("Lowe's"). You have submitted a copy of a letter notifying Lowe's of the request as required by section 552.305(d). *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances).

Section 552.301 of the Government Code prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) provides that "[t]he governmental body must ask for the attorney general's decision . . . not later than the 10th business day after the date of receiving the written request [for information]." Section 552.301(e)(1)(D) provides that "[a] governmental body that requests an attorney general decision . . . must . . . not later than the 15th business day after the date of receiving the written request . . . submit to the attorney

general . . . a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested.” Section 552.302 provides that “[i]f a governmental body does not request an attorney general decision *as provided by Section 552.301* . . . the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.” (Emphasis added.)

You failed to submit the requested information or representative samples of that information to this office, as required by section 552.301(e)(1)(D). Therefore, under section 552.302, the requested information is presumed to be subject to required disclosure and must be released, unless there is a compelling reason to withhold any of the information from the public. As a general rule, the operation of section 552.302 can be overcome by a demonstration that the information at issue is deemed to be confidential under some other source of law or that privacy or proprietary interests of third parties are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 (1982).

As of the date of this letter, the third party you notified pursuant to section 552.305 has not submitted to this office any comments explaining why the requested information should not be released. Consequently, this office has no basis on which to conclude that the requested information is excepted from required public disclosure under the Public Information Act. Accordingly, we conclude that the city must release the requested information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be

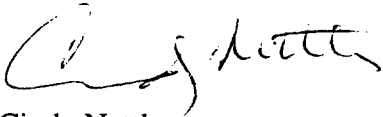
provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/seg

Ref: ID# 150421

c: Mr. Tim E. Dennis
Willow Creek Sign, Inc.
P.O. Box 79326
Saginaw, Texas 76179

Mr. Ryan Hawkins
Lowes Home Improvement Warehouse
1051 North Stemmons Freeway
Lewisville, Texas 75067